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SUBJECT: CROATIA MAKING PROGRESS IN COOPERATION WITH ICTY

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Classified By: Deputy Chief of Mission Vivian Walker, for reasons 1.4(b)  
) & (d).

¶1. (C) SUMMARY: Representatives of the International Criminal Tribunal for the former Yugoslavia (ICTY) said that Croatia and ICTY have reached agreement on a list of key documents in the Gotovina case that Croatia now admits existed. According to ICTY's representative in Croatia, this represents a positive step in cooperation with ICTY. The ICTY rep said there is now a real dialogue at the working level between ICTY and Croatian officials and that he is supportive of the process. This agreement should help return Croatia to full cooperation with ICTY. End Summary.

¶2. (C) In a February 19 conversation with EmbOff, Thomas Osorio, ICTY representative in Croatia, said that the Government of Croatia (GOC) reached an 11th hour agreement with ICTY on a list of key documents in the Gotovina case that Croatia now admits existed at the time of the war. While the actual number of key documents in the agreement is not clear and ranges between 22 and 36, Osorio added that the nature and quality of the documents are more important than the quantity.

¶3. (C) Gordan Markotic, Head of the Office for Cooperation with the ICTY at the Ministry of Justice told us that the GOC's ongoing internal inquiry launched in June 2008, and led by Markotic himself, revealed that 23 documents were produced at some point. This finding is based on interviews conducted with Croatian Army officers who were involved in Operation Storm in 1995. Some of these documents were not official documents, but rather personal notes and diaries with information pertaining to the military operation. Others were official documents and the GOC will try to establish the chain of custody for the documents with the intent to prosecute any individuals who destroyed or illegally possessed these documents.

¶4. (C) Osorio, in a separate conversation with Embassy officials on February 19, said cooperation with GOC has neither improved or deteriorated, but only that there has been "lateral movement." He said that ICTY's Office of the Prosecutor (OTP) does not insist on a specific number of documents, but does want the GOC to produce any key documents that must have been produced during the military operation. He said that through consulting military experts, the OTP concluded that a series of documents must have been produced to allow for carrying out artillery operations, such as intel reports, transportation and logistics documentation, lists of targets, etc.

¶5. (C) Osorio told the Embassy that it was not clear whether the documents would be submitted to the judge before the prosecution rests its case. (NOTE: While the GOC admits that these documents existed, it is still investigating the current status of the documents. Three people are currently on trial and Justice Minister Simonovic announced this week

that several additional individuals are under investigation for their roles in possibly concealing documents. END NOTE.)

If the documents do not make it to ICTY before the deadline, Osorio expects the judge will allow them to be introduced at a later date. He added that the next step in the process is for the ICTY and GOC to coordinate on a media strategy.

¶6. (U) Croatian media reported that Brammertz briefed a gathering of EU diplomats in Brussels on February 18 on the status of Croatia's cooperation with ICTY. He told them that Croatia's cooperation has improved and he commended the work of Justice Minister Simonovic.

¶7. (C) COMMENT: The agreement about which documents existed is a very positive development in the relationship between ICTY and GOC and reflects Minister Simonovic's candor in trying to resolve this issue (reftel). While many of these documents may never be found, the admission by the GOC that they did exist, combined with the ongoing criminal investigations in Croatia, and a likely ICTY ruling to admit evidence even after the prosecution rests, represent a step forward towards resolving the issue of Croatia's cooperation with ICTY and removing a stumbling block to EU accession.

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BRADTKE